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8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 IVAN VON STAICH,
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13 Petitioner,
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15 v.
16 U.S. PAROLE COMMISSION,
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18 Respondent.
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Case No. 1:21-cv-00628-HBK

ORDER DIRECTING PETITIONER TO
NOTIFY COURT WHY PETITION SHOULD
NOT BE DISMISSED AS MOOT

FOURTEEN-DAY RESPONSE PERIOD

ORDER DIRECTING CLERK OF COURT TO
UPDATE PETITIONER'S ADDRESS

ORDER DIRECTING CLERK OF COURT TO
SERVE ORDERS BY CERTIFIED MAIL ON
RESPONDENT

20 Petitioner Ivan Von Staich initiated this action by filing a *pro se* petition for writ of
21 mandamus under 28 U.S.C. § 1651. (Doc. No. 1). On April 16, 2021, the Court ordered
22 Respondent to respond to the petition and served a copy of this order electronically on the United
23 States Attorney's Office for the Eastern District of California. *See docket*. Respondent has not
24 yet responded to the petition.¹ It appears Petitioner was arrested on a warrant for violating the
25 terms of his federal parole and was temporarily detained in the Fresno County Jail. (*See*
26 *generally* Doc. No. 1). The Court has *sua sponte* reviewed the docket and notes that mail
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28 ¹ The Court notes that Respondent was served by regular U.S. mail instead of by certified mail as required
by Federal Rule of Civil Procedure 4(i)(2) and as directed in the Court's Order.

1 addressed to Petitioner at Fresno County Jail was returned undeliverable. (*See* docket). The
2 Court takes judicial notice under Federal Rule of Evidence 201 that Petitioner is currently
3 incarcerated in Victorville United States Penitentiary with a stated release date of December 4,
4 2021.² The Court directs the Clerk of Court to update Petitioner's address accordingly.

5 Although Petitioner now appears to be in the custody of the Bureau of Prisons, the Court
6 cannot discern from the docket the status and/or the exact nature of the charges against Petitioner.
7 *See U.S.A. v. Von Staich*, No. 2:80-cr-00027-TLN (E.D. Cal. July 9, 1980). Nevertheless,
8 Petitioner has been appointed counsel in connection with his current confinement. *See Von*
9 *Staich*, No. 2:80-cr-00027-TLN (Doc. No. 29). In his writ of mandamus, Petitioner seeks a court
10 order directing Respondent to terminate his pending parole violation proceedings on the basis that
11 he no longer is on parole. (Doc. No. 1 at 6-7). Accordingly, it appears that Petitioner is
12 challenging the fact or duration of his current custody. If so, Petitioner should seek relief through
13 writ of habeas corpus under 28 U.S.C. § 2255 or § 2241. However, such a petition appears
14 premature because Petitioner must exhaust all administrative remedies prior to filing either
15 petition. *See Martinez v. Roberts*, 804 F.2d 570, 571 (9th Cir. 1986) ("Federal prisoners are
16 required to exhaust their federal administrative remedies prior to bringing a petition for a writ of
17 habeas corpus in federal court."); *see also Feldman v. Henman*, 815 F.2d 1318, 1321 (9th Cir.
18 1987). If the parole violation proceedings are ongoing and/or if Petitioner has not yet appealed a
19 finding that he violated parole, any request for relief under § 2255 or § 2241 would be premature
20 at this time.

21 Because Petitioner is no longer detained in the Fresno County Jail and appears to have
22 been transferred to BOP custody, his petition appears to be moot. Accordingly, before
23 recommending dismissal, the Court will afford Petitioner the opportunity to show cause why his
24 petition should not be dismissed as moot. Alternatively, Petitioner may seek to voluntarily
25 dismiss the instant writ of mandamus in order that he may seek relief through either a § 2241 or
26 § 2255 petition at the appropriate time.

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28 ² *See* Bureau of Prison's Inmate Locator, <https://www.bop.gov/inmateloc/>, last accessed July 12, 2021.

Accordingly, it is **ORDERED**:

1. The Clerk of Court is directed to update Petitioner's address to Victorville United States Penitentiary.

2. The Clerk of Court is directed to serve a copy of this Order and a copy of this Court's April 16, 2021 Order (Doc. No. 7) by certified mail on Respondent and an electronic copy on the United States Attorney's Office for the Eastern District of California.

3. Within fourteen (14) days of receipt of this Order, Petitioner is ordered to show cause why his petition should not be dismissed as moot or notify the Court whether he wishes to voluntarily dismiss the instant petition.

Dated: July 13, 2021


HELENA M. BARCH-KUCHTA
UNITED STATES MAGISTRATE JUDGE